

RETURN DATE: DECEMBER 22, 2015 : SUPERIOR COURT
LIME ROCK PARK, LLC : J.D. OF LITCHFIELD
VS. : AT LITCHFIELD
PLANNING AND ZONING COMMISSION OF
THE TOWN OF SALISBURY : DECEMBER 4, 2015

CITATION

TO ANY PROPER OFFICER:

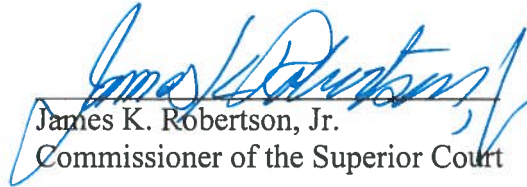
BY AUTHORITY OF THE STATE OF CONNECTICUT, You are hereby commanded to summon the PLANNING AND ZONING COMMISSION OF THE TOWN OF SALISBURY, of 27 Main Street, Salisbury, Connecticut 06068, to appear before the Superior Court for the Judicial District of Litchfield, at Litchfield on the Fourth Tuesday of December, 2015, (December 22, 2015), said appearance to made by said PLANNING AND ZONING COMMISSION OF THE TOWN OF SALISBURY or its attorney by filing a written statement of appearance with the Clerk of said Court whose address is 15 West Street, Litchfield, Connecticut 06759 on or before the second day following said return day, then and there to answer unto the following Appeal of LIME ROCK PARK, LLC, of 497 Lime Rock Road, Lakeville (Town of Salisbury), CT 06039, by leaving with the Town Clerk of the Town of Salisbury, 27 Main Street, Salisbury, CT 06068, or at the Town Clerk of the Town of Salisbury's

usual place of abode, two (2) true and attested copies of the Appeal and of this Citation, on or before Wednesday, December 9, 2015. Said Town Clerk is to retain one (1) copy of the Appeal and Citation and forward one (1) copy of the Appeal and Citation to the Planning and Zoning Commission of the Town of Salisbury.

I hereby certify that I have personal knowledge of the financial responsibility of the plaintiff and deem it sufficient to pay the costs of this action.

Hereof fail not but of this writ with your doings thereon, make due service and return.

Dated at Waterbury, Connecticut this 4th day of December, 2015.



James K. Robertson, Jr.
Commissioner of the Superior Court

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APPEAL

TO THE SUPERIOR COURT FOR THE JUDICIAL DISTRICT OF LITCHFIELD, 15
West Street, Litchfield, Connecticut 06759, ON THE FOURTH TUESDAY OF DECEMBER,
2015, (DECEMBER 22, 2015), comes LIME ROCK PARK, LLC of 497 Lime Rock Road,
Lakeville (Town of Salisbury), CT 06039 appealing under Connecticut General Statutes Sections
8-8 and 8-9 from a decision of the defendant PLANNING AND ZONING COMMISSION OF
THE TOWN OF SALISBURY enacting certain amendments to the Salisbury Zoning
Regulations. Plaintiff complains and says:

1. The defendant, Planning and Zoning Commission of the Town of Salisbury (the
“Commission”), is the duly authorized body of the Town of Salisbury, a
Connecticut municipality, situated in Litchfield County, having all the powers and
duties set forth in the Connecticut General Statutes, including Chapter 124 of the

Connecticut General Statutes (“C.G.S.”), relating to municipal zoning commissions and their members.

2. This appeal is from amendments to the Salisbury Zoning Regulations, proposed by the Commission on or before July 20, 2015 and modified and adopted by the Commission on November 16, 2015. Notice of the adoption of the amendments was published in the Waterbury Republican-American on November 24, 2015, within 15 days of the taking of this appeal.
3. The amendments pertain to the operation of race tracks and uses accessory to race tracks, within an area classified by the Salisbury Zoning Regulations as a Rural Enterprise (“RE”) District.
4. The plaintiff, Lime Rock Park, LLC (“LRP”) owns property located at 497 Lime Rock Road, Lakeville (Town of Salisbury, Connecticut 06039 (the “Property”), within the RE district.
5. Motor vehicle racing, contests and demonstrations of speed and skill have been conducted at the Property since 1957 on a race track known then as the Lime Rock Race Track and now as Lime Rock Park (the “Track”). In 1957, such activities were conducted on all days of the week, including Sundays.

6. Activities accessory to the Track in 1957 included, among other things, automobile shows and exhibitions for auto sales, automotive repair and auto repair pits, lunch counters and stands, camping in all areas of the Property, television, movie, radio production, and lighting and sound equipment.
7. On June 8, 1959, the Commission adopted zoning regulations (the “1959 Regulations”).
8. Section 2.1. of the 1959 Regulations divided the Town of Salisbury into various classes of districts including the RE District, designated as “RUE-80”.
9. The boundaries of the various districts were depicted on the “Building Zone Map of the Town of Salisbury,” dated June 8, 1959, which map was incorporated into the 1959 Regulations through Section 2.2 thereof.
10. The LRP Property was virtually the only parcel in the RE District when it was created in 1959. It continues to be virtually the only parcel in the RE District today.
11. From 1957 to the present, the Track has been the only race track in the RE District or the Town of Salisbury.
12. Section 411.21 of the 1959 Regulations listed “a track for racing motor vehicles” among the “Uses Permitted in [RE] Districts.”

13. Specifically, the 1959 Zoning Regulations permitted “[a] track for racing motor vehicles, excluding motorcycles, to which admission may be charged, and for automotive education and research in safety and for performance testing of a scientific nature.”
14. The 1959 Regulations also permitted uses accessory to a race track: “Accessory uses may include grandstands, judges’ stands, automobile repair pits, rest rooms, lunch counters or stands. Accessory uses may also include use of the premises for automobile shows and exhibitions, for the sale of motor vehicles, automotive parts and accessories and fuels, for manufacturing and automotive repair incident to the other activities herein permitted. Other accessory uses may also include the production of television, motion picture or radio programs and the use of necessary lighting and sound equipment therefor.”
15. Unlike some uses in the 1959 Regulations which were only allowed “when specifically approved, after a public hearing, by the [Commission] as conditional uses and subject to such conditions as the Commission may establish” (for instance, uses in Section 4.1.7), the 1959 Regulations did not require a property owner to obtain a permit to operate a race track or uses accessory thereto. All such uses were permitted as of right in the RE District.

16. Although Section 16.3 of the 1959 Regulations required a property owner to obtain a permit for constructing, enlarging or moving a building, the 1959 Regulations did not require a property owner to obtain a permit for existing, permitted buildings or uses. For example, while the private preparatory schools in Town were required to get permits for new buildings or uses, they were not required to obtain permits for existing buildings or existing uses such as running a boarding school. As such, in 1959, the owner of the LRP Property did not need to obtain any kind of permit to operate the Track under the 1959 Regulations as a permitted use.
17. Pursuant to Section 411.21.1 of the 1959 Regulations, races could be conducted “during such hours as are permitted by statute.”
18. In 1935, the Connecticut General Assembly adopted Connecticut General Statutes (“CGS”) § 898c, the precursor to CGS § 14-164a, governing race track operations.
19. As of 1959, § 898c was codified as CGS § 29-143 and provided that races, contests and demonstrations of speed or skill could “be conducted at any reasonable hour of any week day or after the hour of two-o’clock in the afternoon of any Sunday, provided no such race or exhibition shall take place contrary to the

provisions of any city, borough or town ordinances.” Therefore in 1959, LRP could hold races, contests and demonstrations any day of the week and after 2:00 on Sundays.

20. As explained in the “Development Plan for Salisbury” adopted on August 3, 1958, “[t]he Lime Rock Race Track is an established recreation business of major proportions” which “legitimately exists as an enterprise operated by citizens of the town.” It is located in an area “not likely to be developed solely or wholly for residence, because of its value for business and industry as a large flat area on gravelly soil.” The Plan recognized that “[a]s has been stated many times, many of the nuisance factors objected to by local residents are not within the jurisdiction of the Commission and can best be dealt with by other legal procedures.”
21. In 1958, a nuisance lawsuit was brought against the-then Property owner by neighbors of the Track. Neither the Town of Salisbury nor the Commission was a party to the lawsuit.
22. On May 12, 1959, a Stipulation of Judgment (the “1959 Stipulation”) was entered in the above-referenced lawsuit which imposed restrictions on numerous aspects

of the day-to-day operation of the Track, including but not limited to hours of racing, as a means to abate noise.

23. The Stipulation was amended on various occasions, including most recently on January 14, 1988, in response to requests by LRP/prior owners to address changing circumstances.
24. Since 1959, there have been various amendments to the sections of the zoning regulations pertaining to the RE District and race track operations. The zoning regulations in effect as of the date the Commission proposed the amendments that are at issue in this appeal are sometimes herein referred to as the “Zoning Regulations.”
25. Section 221.2.a of the Zoning Regulations provides that “[n]o races shall be conducted on any such track except during such hours as permitted by Court Order dated 5/12/59 and subsequent related Court Orders on file in the Planning and Zoning Office, or the Town Clerk’s Office.” As such, the Zoning Regulations incorporate the 1959 Stipulation and “subsequent related Court Orders on file”, if any, (referred to in the Zoning Regulations as the “Court Orders”) only as they pertain to hours of races.

26. The Connecticut General Assembly has permitted racing, contests and demonstrations of speed or skill seven days a week since the adoption of § 898c in 1935. The current version of CGS § 14-164a allows such activities to “be conducted at any reasonable hour of any week day or after twelve o’clock noon on any Sunday” except that the “legislative body of the city, borough or town in which the race or exhibition will be held may issue a permit allowing a start time prior to twelve o’clock noon on any Sunday, provided no such race or exhibition shall take place contrary to the provisions of any city, borough or town ordinances.” (Emphasis added).
27. On August 24, 2015 and September 3, 2015, the Commission published notice of the public hearing to be held on the amendments at issue in this appeal in the Waterbury Republican American and the LV Journal (Lakeville Journal), respectively (the “Notice”). The Notice stated that “Copies of the proposed amendments are on file in the office of the Town Clerk Salisbury Town Hall and in the Planning & Zoning Office.” The amendments on file are herein referred to as the “Noticed Amendments.”
28. The Noticed Amendments, *inter alia*, incorporated into the Zoning Regulations all of the terms and conditions of the most recent Stipulation, including but not

limited to provisions addressing muffled vs. unmuffled activity, loudspeakers, non-racing motorcycle activities, camping, use of accessways abutting property “located at 52 White Hollow Road”, signage and lighting.

29. The Noticed Amendments also list a “Track for Racing Motor Vehicles” as a use in Table 205.2 “Table of Uses”, and list “Activities incidental/accessory to Lime Rock Park” in Table 205.3 “Table of Accessory Uses.”
30. The Noticed Amendments do not eliminate race tracks as a permitted use within the RE District and the Notice provided no warning that the Commission might consider doing so.
31. The Commission held a public hearing on the Noticed Amendments on September 8, 2015, which was continued to and closed on October 19, 2015. During the public hearing LRP advised the Commission that days and hours of racing were governed by State law, specifically, CGS § 14-164a.
32. On November 16, 2015, the Commission began deliberations on the Noticed Amendments. At the start of the meeting, the Chairman circulated a modified version of the Noticed Amendments (the “Modification”, and as modified, the Noticed Amendments are referred to as the “Modified Amendments”).

33. The Modified Amendments include limits on days and hours of racing and race car activities, contrary to CGS § 14-164a.
34. In recognition of the fact that an attempt to control the days and hours of racing and race car activities may exceed its statutory authority, the Commission included a new section (221.6) in the Modification which operates as an “*in terrorem*” clause, to punish LRP if it successfully challenges any provision of the Modified Amendments. Specifically, section 221.6 provides that:

If any portion of this section 221.1 shall be found by a court of competent jurisdiction to be illegal, it is the intent of this Commission no part of Section 221.1 shall remain valid, including the amended table of uses adopted simultaneously herewith providing that a track for racing of motor vehicles shall be allowed by special permit in the RE District; it being the intent of the Commission that, if it is found that the Commission lacks authority to regulate any aspect of Race Track use as set forth herein, then a track for Racing of Motor Vehicles shall be found to not be permitted in the RE District, and any race track use in existence at the time of the adoption of these regulations shall have such rights as may exist as a nonconforming use under these regulations and Connecticut law.

35. The Resolution of Approval (as drafted by the Commission’s attorney) explained that “[Section 221.6] has been inserted in light of claims that parts of the existing regulations and proposed amendments may be illegal.”

36. In short, the Commission inserted the “*in terrorem*” clause so that if LRP successfully proved the Commission had exceeded its authority and the Modified Amendments were illegal, the regulations would not revert to those existing before adoption of the Modified Amendments, but instead, LRP would be punished through the imposition of a more restrictive zoning classification – that of a preexisting nonconforming use. As such, the insertion of the *in terrorem* provision is intended to punish LRP if it chooses to exercise its right to use the court system to contest the Modified Amendments.
37. Although by law, nonconforming uses must be allowed to continue to operate, they are limited in their rights to expand or change, and the goal of zoning is to ultimately eliminate them.
38. Had the Commission provided notice that it would modify the Noticed Amendments in a way that could result in the Track becoming a preexisting nonconforming use as opposed to a permitted use, (thus restricting LRP’s ability to expand and/or change operations as necessary to remain competitive and viable), LRP would have offered evidence at the public hearing of the many and significant economic benefits the Track brings to the Town of Salisbury. For example, in November 2015, LRP responded to a request by the Salisbury

Economic Development Commission for a detailed economic report, which report demonstrated the Track's economic value to the Town of Salisbury. LRP would have submitted this report, or a similar report, at the public hearing had it been given notice of Section 221.6.

39. Had the public known that the Modified Amendments would potentially eliminate race tracks as a permitted use (thus restricting LRP's ability to expand and/or change operations as necessary to remain viable), additional individuals and organizations may have attended the public hearing. For instance, people whose businesses rely heavily on the Track, as well as people representing groups whose purpose is to advance economic development and business in Salisbury (such as the Economic Development Commission or Chamber of Commerce) may have attended.
40. Thus, because the Notice and the amendments on file with the Town of Salisbury up to the time that the public hearing closed did not include the Modifications, neither LRP nor other members of the public could prepare adequately for the public hearing. In fact, the Chairman specifically stated at the opening of the public hearing that the hearing was not a venue to say all the good the Track does for the town.

41. The Chairman further stated at the opening of the public hearing that the hearing was not the forum for complaints about the Track. Despite this statement, complaints were allowed, but LRP was not allowed to rebut such complaints.
42. The Notice also failed to adequately advise members of the public that they might have an interest in attending the public hearing, and failed to fairly and sufficiently apprise those who might be affected of the nature and character of the action proposed, so that such persons or organizations could properly prepare to participate in the hearing.
43. The Modified Amendments are contrary to the comprehensive plan because while the plan (as found in the scheme of zoning) allows race tracks as a permitted use, the Modified Amendments seek to limit the operation of a race track to such an extent that the use will no longer be viable.
44. The Modified Amendments are contrary to the Town of Salisbury 2012 Plan of Conservation and Development because they will destroy the viability of the Track, which in turn will harm numerous small businesses in Salisbury that rely heavily on Track patrons. This is directly contrary to the Plan's stated intent to modify zoning to promote "additional small businesses in Lime Rock village center (restaurants, general store, boutiques, offices, etc.)." Furthermore, damage

to the Track's viability is contrary to the Plan's goal of "foster[ing] ... employment opportunities that attract full-time residents to Salisbury."

45. The Modification added a provision requiring someone seeking to amend the RE District regulations to not only file an application to amend the Regulations, but also to apply for a special permit. Requiring parties to apply for a special permit as a condition of being allowed to petition the Commission to amend the Zoning Regulations is contrary to CGS §8-3(c), which governs the amendment of zoning regulations and does not require a special permit application.
46. Based on comments from the Commission members, they interpret the Modified Amendments to compel LRP to choose between filing an application for a special permit to operate the Track in compliance with the Modified Amendments or operating as a pre-existing nonconforming use.
47. Based on comments from the Commission, some of the Commissioners may interpret the Modified Amendments to require LRP to obtain a special permit for nearly every event that it holds, which is contrary to how the special permit procedures are applied to other entities in Town.

48. On November 16, 2015, the Commission voted to approve the Modified Amendments, amending Sections 221.1, Definitions and Tables 205.2 and 205.3 of the Zoning Regulations.
49. Notice of the Commission's decision was published in the Waterbury Republican American on November 24, 2015.
50. LRP is harmed by the adoption of the Modified Amendments because, *inter alia*, the Commission is attempting to require LRP to obtain a permit to conduct its existing operations when there is no legal basis for doing so; the Commission is limiting racing and race car activities, in violation of State law; the Commission is prohibiting racing and race car activities on Sunday, in violation of State law; and if LRP successfully proves the Modified Amendments are illegal, LRP will be punished.
51. The Commission acted illegally, arbitrarily, capriciously and in abuse of its discretion in adopting the Modified Amendments, in one or more of the following ways:
 - a. The provisions limiting days and hours of racing and race car activities are preempted by CGS § 14-164a.

b. The Commission cannot require a property owner operating as an existing, permitted use to apply for a special permit to continue to operate in the same manner it currently operates.

c. The Commission exceeded its statutory authority under CGS § 8-3(c) by requiring someone seeking to amend the RE District regulations to apply for a special permit as a precondition.

d. Notice for the public hearing was insufficient given the significant differences between the Noticed Amendments and the Modified Amendments that were adopted. As a result of the failure to give proper notice of these significant differences, especially section 221.6, LRP and other interested and affected parties were not fairly and sufficiently apprised of the nature and character of the action proposed, so that such persons or organizations could properly prepare to participate in the hearing.

e. There is no evidence in the Record to support the Modified Amendments. Although they purport to address the minutia of race track operations, including hours of operation, when mufflers are or are not required, accessways, camping, lighting, parking and numerous other details, the record is devoid of discussion or facts pertaining to these issues such as problems created

or factual bases showing why the Modified Amendments are necessary or appropriate.

f. There is no legitimate land use planning basis to support the Modified Amendments. They are simply an effort to incorporate a stipulation in a nuisance lawsuit between private parties into the Zoning Regulations. The Commission failed entirely to consider whether those provisions are necessary or appropriate. Rather, the Commission simply assumed the terms and conditions from a 1959 court decision constitute valid and appropriate land use regulations over fifty years later, despite uncontroverted evidence in the Record that conditions have changed significantly.

g. The provisions pertaining to muffled and unmuffled racing and race car activities are illegal attempts to regulate noise.

h. The Modified Amendments constitute illegal spot zoning.

i. The Amendments target a single property owner by attempting to regulate detailed aspects of LRP's business operations to an extent far beyond that of any other business in the Zoning Regulations.

j. The Modified Amendments seek to regulate a user, rather than a use, as evidenced from references to “Lime Rock Park” and to a particular neighboring property, 52 White Hollow Road, in the Modified Amendments.

k. The Modified Amendments contravene the requirement of CGS § 8-2(a) that zoning regulations be in conformity with the Comprehensive Plan.

l. Section 221.6 constitutes illegal conditional zoning.

m. By including section 221.6, the Commission seeks to restrain

LRP’s right to appeal, thereby violating LRP’s due process rights.

52. Plaintiff is aggrieved as the owner of the land and operator of the Track that are the subject of the Amendments.

53. Plaintiff is also aggrieved in that it has a specific, personal and legal interest in the subject matter of the decision, as distinguished from a general interest such as that of the community as a whole, which interest, as set forth in the preceding paragraphs, will be harmed by enactment of the Modified Amendments.

WHEREFORE, the Plaintiff appeals from said decision of the Defendant Planning and Zoning Commission of the Town of Salisbury and requests:

1. That the Court sustain this appeal;
2. That the Court declare the Modified Amendments to be illegal and without effect;
and
3. Such other legal and equitable relief as the Court deems proper.

Dated at Waterbury, Connecticut this 4th day of December, 2015.

THE PLAINTIFF,
LIME ROCK PARK, LLC

BY:


JAMES K. ROBERTSON, JR.

FOR: Carmody Torrance Sandak & Hennessey, LLP
50 Leavenworth Street
P. O. Box 1110
Waterbury, CT 06721-1110
Juris No. 008512
Its Attorneys

Please enter the appearance of:

James K. Robertson, Jr., Esq.
Carmody Torrance Sandak & Hennessey, LLP
50 Leavenworth Street
Waterbury, CT 06710-1110
Juris No. 008512
in this matter on behalf of the plaintiff.